SPEECH OF HON. I. WASHBURN, JR.,

OF MAINE,

IN THE HOUSE OF REPRESENTATIVES.

MARCH 14, 1856,

On the Resolution reported by the Committee of Elections, in the Contested Election Case from the Territory of Kansas.

Mr. WASHBURN, of Maine, said:

Mr. SPEAKER: In the remarks which I shall submit at this time, it will be my purpose to speak directly, though in no formal phrase, to the points fairly raised by the resolution before the House.

The first question in order is: *Whether, conceding that the House has power to inquire and decide, in this election case, upon the regularity and validity of what is claimed to have been the first Legislature in Kansas, the charges of irregularity are sufficiently grave and responsible to justify an investigation?* That the charges are of a most serious character will not be denied; and that they come before us in such form as to warrant a full examination, if we have the power to make it, should seem to be too clear for controversy.

"Common fame," says the Manual, "is a good ground for the House to proceed by inquiry, and even to accusation."

In the case of the Kansas elections, there have been and are wide-spread and generally-credited rumors of wrong—reports coming in various shapes and forms from that Territory—in letters from citizens residing there, in the statements of those who were themselves witnesses to the facts of which they speak—filling the columns of the newspapers, recognised by Executive messages and proclamations, by the action of State Legislatures, by reports of committees, and discussions in both Houses of Congress.

Besides, the people of Kansas, or a large portion of them, through their agent in this regard, Governor Reeder, present themselves before this House, and inform it—

"That immediately before the 30th day of March last, being the day fixed for the election of a Legislature for the Territory of Kansas, large bodies of men, without pretensions to residence in the Territory, came over from the neighboring counties of the State of Missouri, armed and organized into companies, with their proper leaders, and supplied with provisions, fodder, accommodations for camping, ammunition, and, in one case at least, with artillery. That they marched into the Territory with banners and martial music, and encamped in parties in the vicinity of different election polls, shortly before the said election, for the purpose of preventing the people of the Territory from electing members of the Legislative Assembly, as provided by the act of Congress, of taking the vote into their own hands, and, by intimidation or violence, taking possession of the polls, and themselves going through the form of electing members of the Legislature, none of whom thus elected were non-residents of the Territory."

And, sir, who is Governor Reeder, by whom the people of Kansas have thus spoken? A distinguished citizen of the State of Pennsylvania, known and honored of her people, by whom he was warmly recommended as eminently worthy of the confidence of the President, he was by him appointed to the discharge of the arduous, delicate, and most responsible duties of Governor of the Territory of Kansas—a post than which none in the gift of the Administration, under the peculiar circumstances of the organization of that Territory, required higher intellectual and moral qualities in the occupant. He was a Democrat, a friend of the Administration, and a believer—and here I think he was greatly in error—in the principles asserted by the President and his Northern friends to be contained in the Kansas-Nebraska bill; and, sir, he was something more, and he has given the highest possible evidence of the fact, an honest man. As such he went to Kansas, with a sincere purpose, that, so far as it depended upon him, the principles of "popular sovereignty," as he understood them, and as they had been interpreted by the President and the Democratic party North, should be maintained. Faithful to his convictions, and relying upon the good faith and support of the Administration, he entered upon the discharge of his high functions, determined that the people of Kansas should rule Kansas; and for that purpose, executed, where occasion required, he was, by the same Administration from which he received his commission, condemned and removed from office. The Administration which struck, but would not hear him, was the delegate of the Slave Power—the organ of a section—bound to its axes and behests. That power had compelled the President to deny that the principles of popular sovereignty were in the Kansas and Nebraska bills, and to assert that, under the Constitution, no Territory had, or could have, the power to exclude Slavery. Governor Reeder could be removed, but he could not be false to his convictions; the President might strike him down, but the power to extinguish his manhood had not been delegated by the South. If the Governor of Kansas could have consented to become the instrument of the President in his design to enslave that Territory for the propitiation of the South, who doubts that he could have held office to this day? And the fact that he could not, and preferred to encounter the frowns

annoyances of his min-
isterial colleagues, and their ceaseless slanders every-
where, rather than submit to dishonor, and felt
that he must hold office, if at all, unbribed, un-
bought—no man's tool, and no man's slave—is
the best evidence of his integrity and probity
that could have possibly been furnished.

The gentleman from Georgia [Mr. STEPHENS]
has denounced Governor Reeder with great vehe-
mence, and declared that, if what he (Governor
Reeder) now alleges, be true, he has acted most
inconsistently and dishonorably, and fallen to the
lowest depths of "infamy and degradation;" as
if, when called upon to act upon such records
and facts as were legally before them, and when
he was bound officially to decide upon the ques-
tion as *then* presented, he might not honestly do
what, at a later time and upon further proofs,
should appear to have been erroneous. Would
any gentleman like to be judged by the rule which
is here invoked for the condemnation of Gov-
ernor Reeder? Sir, I differ from the gentleman
in my deductions from what he avers was the
conduct of Governor Reeder. If what he says
be true, and the Governor, upon full knowledge,
and such as he could act upon, was brave and
strong enough to do what then appeared right,
even though at the expense of impeaching the
correctness of his previous action, I say, all honor
to him. And, sir, if what I have seen in the news-
papers be true, this was the view which was taken
of Governor Reeder, and of his official course,
down to the latest moment, by the President and
his official advisers. I do not know how it is,
and I will not say that the report to which I am
about to allude is correct. I have had no com-
munication with Governor Reeder, or information
from him or any of his friends, upon the subject;
but I will say that I have seen it stated in the
newspapers, that, after all these things charged
against Governor Reeder had transpired, and were
well known at Washington—after he had reached,
as the gentleman from Georgia says, the lowest
deeps of infamy and degradation, the President
did that which implied the most unlimited con-
fidence in and the highest respect for him. I
have seen it stated that the President, at a time
when he must have been in possession of all the
facts upon which he defends the removal of Gov-
ernor Reeder, in order to induce him to resign,
offered him, directly or indirectly, in some such
way, I presume, as Presidents are said to have
for doing these things, a foreign appointment
of the highest grade, and importing, as I have
said, unabated confidence in his character—a mis-
sion to China, I believe it was said, in the first
place; and that not proving a sufficient induce-
ment, the appointment of Minister to the Court of
St. James. I repeat, I do not know how this
thing is, but I have seen the statement which I
have made, or one substantially like it, in the
public journals, and have never seen a contradic-
tion, although the "*Union*" has been challenged
to contradict it. If true, Governor Reeder has
been endorsed by the President to the fullest ex-
tent, because it is not to be supposed that he
would think for a moment of sending abroad, to
fill one of the highest places in the gift of the Ex-
ecutive, an unworthy or dishonest man. If
he tendered such an appointment to a man kn
by him to be a scoundrel, then, I submit, he
himself fathomed depths of degradation and
famy, not only such as the late Governor of K
sas never explored, but lower than plummet
sounded. Gentlemen may take either hor
the dilemma.

Mr. SMITH, of Virginia. I desire to k
whether the gentleman wishes the House
country to understand that he makes the ch
that the President offered Governor Reeder a
eign appointment of the first grade, if he wo
resign his position as Governor of Kansas?

Mr. HICKMAN. I will answer the gentler
from Virginia.

Mr. SMITH. I want an answer from the g
tleman from Maine.

Mr. WASHBURN. I will answer the gen
man. I have seen it so stated in the newspap

Mr. SMITH. Ah!

Mr. WASHBURN. A correspondent of
New York *Tribune*, if I am not mistaken,
made the charge, and dared the Washing
Union to deny it. I DARE the gentleman fr
Virginia to deny it.

Mr. SMITH. I know nothing of the subje
but I will say, that I do not believe a word of
It is a bold and unmitigated falsehood, and un
coming any member upon this floor to give h
any credit to these newspaper statements.

Mr. WASHBURN. And I do believe ev
word of it; and although the gentleman denou
ces the report as false, he admits that he h
no knowledge on the subject. If it is false,
the gentlemen who are authorized—and there
gentlemen here who can speak for the Executiv
deny it, if they can. As to what is becoming
unbecoming for me to say, I am my own jud
but this is the first time I have heard that it w
unbecoming to refer to newspaper statements

But the minority of the committee have adm
ted that, if we have a right to decide in regard
the regularity and legality of the Kansas elect
in March last, there is good reason for the passa
of this resolution. They say in their report:

"If it is the judgment of the House that we should e
into such an investigation, and take jurisdiction of t
question—making ourselves the judges of the qualificati
and election returns, not only of our own members,
also of the Territorial and State Legislatures, which
lows as a matter of course—then the conclusion to wh
the majority of the committee have come is right."

Here, I think, this branch of the case may
safely rested. I will merely add, in this conn
tion, that the minority seem to misapprehend
purpose of the majority, which is not to judge
the "qualifications and election returns" of me
bers of a Legislature, so much as to ascert
whether in point of fact there was a Legislatu

The next question, Mr. Speaker, which I w
consider, is this: *Granting the truth of the char
and allegations in the memorial of Governor Reed
has the House authority to inquire into the f
whether there was or not a Legislature in Kan
by which laws were, or could be, enacted in rel
ence to elections in that Territory, binding upon
people and upon this House?* That has been ma
the great question in this debate. The minor

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of the committee deny that the House possesses this power. They deny it in their report, as well as in the paper attached thereto, submitted by General Whitfield, and which they have substantially adopted as a part of their report. The minority say, "It will be assuming a jurisdiction which we do not believe properly belongs to us, and will be establishing for the first time in our history a principle and a precedent of most dangerous tendency;" but not half so dangerous, I would suggest, as would be established, if we, by refusing to assume jurisdiction, should decide that fraud and violence in elections, where the rights of our own members are concerned, no matter how gross nor how well vouched, are matters into which we have no power to inquire.

Before entering upon the consideration of this question, there is a point made by the minority, to which I wish to say a few words. It is this: that there are no parties before the House, on whose motion the inquiry proposed can be instituted. They assert that neither Governor Reeder nor the people of Kansas are properly here; and that the House, upon its own motion, can only inquire as to the "qualifications" of members, and not as to the elections and returns. To this I reply, that, in the first place, Governor Reeder and, through him, the people of Kansas, are properly before the House, and may well raise objection to the claims of the sitting Delegate; and, secondly, that if it were otherwise, the House can, upon the motion of any member, make the investigation. The Constitution says, "Each House shall be the judge of the elections, returns, and qualifications of its own members;" and what it may do in one of the specifications, it may do in all. There is no restriction, and no reason for any. Mark, how careful and precise, how full and comprehensive, is the language!—it seems to have been prepared to prevent all question and cavil. The House may judge of the *qualifications*; that is, as to the age, residence, and citizenship, of the claimant. It may also judge of the *returns*—the certificate or other evidence which he produces; and it may go further, and beyond the returns, although they appear to be in form and correct, and look into the *election* itself, and see if *that* was all right—if it was made at the proper time and places, and by the proper parties; and if not, may set it aside. It may look into every fact upon which the election depends—into the laws regulating the election; and, of course, may inquire whether there were any laws binding upon the House or upon the people whose rights are in controversy. Now, all this is so plain that argument cannot help it. The memorialist denies that there was a Legislature in Kansas. The minority insist that, whether this be true or not, the House cannot inquire. The question is one of fact merely, and, like all questions of fact, must be settled by proof; and, from the nature of the case, the only evidence that can be had is that of witnesses to what has transpired. If the body of men who assumed to be a Legislature were not elected by the inhabitants of Kansas, but by the people of Missouri, who went into Kansas merely for the purpose of voting, and, having voted, returned home, it cannot be contended that they were the Legislature contemplated by the organic law of the Territory. This is a question of fact, and is susceptible of proof. Men who were upon the ground know whether the people of Kansas were driven from the polls or not, and whether the elections were managed and carried by non-residents. If here, they could inform the House of facts from which it would be able to decide whether the alleged Legislature was in truth what it claimed to be, or anything more than a convention, a caucus, or a mob. But, say the minority, we are not permitted to inquire into these things; we have the laws of that Legislature, their book of statutes, and their Journal; we cannot go behind them—they are conclusive. Every Legislature, they say, has the power to judge of the elections of its members, and by its decisions we are bound. This, to a certain extent, is true, but there must be a *Legislature to judge*; and when, as in this case, the fact that there was a Legislature is controverted and put in issue, the issue must be tried; and the assumptions and acts of such pretended Legislature cannot be received as final and conclusive evidence of its legal existence. If there were in fact no Legislature in Kansas, it is not easy to perceive how the acts of a body of men assuming to be such can make it a Legislature—can validate and make legal what is in itself null and void. Certainly, it is a novel doctrine, that a convention or promiscuous assembly can, *proprio vigore*, transform itself into a legal Legislature, and make its own records conclusive evidence of its rightful and proper creation and existence.

Suppose the people of Pennsylvania and Maryland should, upon an election day in Delaware, pass over into that State in large numbers, and take possession of the polls, manage the elections, and themselves choose all the members for the State Legislature, and such members, afterwards assembling, should, in collusion with the Governor, act as a Legislature, pass laws regulating future elections, and then, under such laws, pay another visit to the State, and in similar manner vote for a member of Congress—would it be said that this House has no authority to inquire into the case, and that the doings of these outsiders, in open violation of law, are sacred from investigation?—that, under our general and unlimited power to judge of the elections of our own members, we are to be stopped in our examination by the production of a certificate of election, or by the proceedings and records of a body of men whose title to be regarded as a Legislature is exposed to such impeachment?—or that such examination might be arrested by a proclamation of the President, issued, it may be, upon the request of an unfaithful Governor, for the very purpose of giving the President power to bring his own creatures into the House, when he may need them to overcome an adverse majority? The statement of the case is argument, and is itself a sufficient refutation of the doctrines set up by the minority of the committee.

The gentleman from Georgia relies upon precedents. He maintains that questions of membership are judicial questions, which every Legislature has an inherent right to decide; and he cites

Coke, Blackstone, and other English authorities, as to the laws and customs of Parliament. Undoubtedly what he has cited is good law; it has not been disputed upon this side of the House; but the gentleman's misfortune is, that his precedents have no application to this case. He may pile up such authorities as he has invoked—and that he could find no better, proves the sterility of his case—high as Olympus, and they will not help him, for they will not touch the question above or beneath. His authorities bear upon the power of a Legislature whose existence is admitted, but have no tendency to convince us that a body of usurpers may, by their own proceedings, resolve themselves into a Legislature whose right may not be questioned or impeached. He says, if asked what is to be done when a question of usurpation arises, he would answer, that the body which comes in in *pursuance* of law is to be regarded as the legal Legislature. Very well; but here may be a grave question of fact, and, to arrive at a just decision, the fact must be ascertained, to wit: whether the body does "come in in pursuance of law." Suppose two bodies claim at the same time "to come in in pursuance of law," and a question arises as to these claims, how does the gentleman propose to decide it? By records, and journals, and seals? Both have all these, and they are apparently as formal and regular in one case as the other. Apply the gentleman's doctrine to the Kansas case. He asserts that the Legislature, under whose laws General Whitfield claims a right to be here, came in in pursuance of law, and I deny it. Now arises the question, What is the truth of the matter? For that body to come in under the organic law as a Legislature, certain things were necessary. It was necessary that a time and that places for the election should be appointed by the Governor, and that the members should be chosen by *certain persons* specified in the law. These were conditions, the non-compliance with which would be fatal; and nobody elected outside of them could be said to come in *in pursuance* of the act of Congress. The gentleman will not contend, that if the election had been held on a different day or at different places from those fixed by the Executive, it would be legal. I would ask if these things of time and place—things of form mainly—be so essential and indispensable, how it can be held that the matters of substance, those which have regard to the persons whose right it was to elect, are unimportant or non-essential? If this Kansas Legislature (so called) were not elected at the time and places appointed, and by the persons appointed, it did not come in *in pursuance of law*, and is no Legislature.

And let me say further, in reply to the gentleman, that whatever inherent rights State Legislatures have to decide upon the election of members, the first Legislature of Kansas had no such right. All its powers in this respect were derived from the General Government, and were such, and such only, as were granted by the Kansas-Nebraska bill.

The gentleman from Maryland, [Mr. DAVIS,] in his very able and ingenious speech, has shivered and scattered most effectually the arguments and defences of those who preceded him in opposition to the resolution reported by the committee. He acknowledged frankly that they had not met the real question in the case. When in a State there is a controversy as to the proper and regular Government, and there are two organizations claiming to be regular, there must of necessity be a power somewhere, outside of those organizations, to determine which is rightful and legal. This he concedes; and I submit that the power exists whenever a real and *bona fide* dispute arises as to the proper existence of a Government or a Legislature, whether there be a concurrent and opposing Government or Legislature, or not. Whenever the question is raised upon proper occasion, it must be decided.

But, while the gentleman from Maryland has been so successful in his assaults upon the positions of others, it appears to me that he has planted himself upon grounds even more indefensible than they have occupied. The power to decide these questions resides somewhere. The President of the United States, he says, under the act of 1795, has authority to call out the militia to suppress insurrections, and in doing this must necessarily determine which is the Government or party to be sustained, and which to be put down; and this decision does not cease to operate with the occasion which called it out, but reaches beyond it, and extends to all cases and over all tribunals. The courts, he adds, follow the political power; and this power, so far as questions of this kind are concerned, is in the President. Now, it is undoubtedly true that the rule of the Supreme Court is to follow the political power in its decisions upon political questions; the judicial power recognises the Government which the political power recognises. Where, from the nature of the case, as when there is an insurrection in a State, the President must decide whether a Government is to be recognised, that decision is the political power, and the courts will follow it in all things to which it refers and upon which it bears; and a citizen indicted for an assault committed by order of the Government which is recognised by the President, will be shielded by the President's recognition of that Government. Where, from the nature of the case, the Senate is to decide, as when a question arises upon the elections and qualifications of its members, its decision, under the Constitution, is the political power which the court will follow in all things touching and growing out of such decision; and so of the House of Representatives: when it decides that one is entitled to a seat as a member, the court will protect him in all the rights and privileges of a member.

This question has been settled so distinctly, and upon reasons so cogent, by the Supreme Court, in an opinion pronounced by Chief Justice Taney, in the case of Luther *vs.* Borden *et al.*, a case growing out of the Dorr disturbances in Rhode Island, that I am unable to see how there can be room for any doubt upon the subject. Chief Justice Taney says:

"Under this (the 4th) article of the Constitution, it rests with Congress to decide what Government is the established one in a State; for, as the United States guaranty

to each State a republican Government, Congress must necessarily decide what Government is established in the State, before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the Government under which they are appointed, as well as its republican character, is recognised by the proper constitutional authority. And its decision is binding on every other department of the Government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and, as no Senator or Representatives were elected under the authority of the Government of which Mr. Dorr was the head, Congress was not called upon to decide the controversy; yet the right to decide is placed there, and not in the courts.

Now, I submit, this covers the whole ground, and, if a decision of our highest court is to be received as authority, settles the question against the gentleman from Maryland.

The gentleman from Maryland, disagreeing with the gentleman from Georgia, maintains that, in deciding upon the election of members, the House acts as a political body, and not as a court. If, then, we are acting in a political or legislative capacity, and the decision to which we may come will be that by which the courts of the land are bound, and the power to make such decision involves, as the Rhode Island case states, the power to look into State Governments to ascertain whether they are regular and legal, then the question is closed, and the propriety of sending for persons and papers, even upon the grounds of the minority, is vindicated; and if, on the other hand, the gentleman from Georgia is right, and we are sitting here as a court, and can inquire into the proceedings of State or Territorial Legislatures only where a court can, we are equally sustained by the authority to which I have referred. Upon this point the court says:

"The point, then, raised here has already been decided by the courts of Rhode Island. The question relates altogether to the Constitution and laws of that State, and the well settled rule in this country is, that the courts of the United States adopt and follow the decisions of the State courts in questions which concern merely the Constitution and laws of a State.

"Upon what ground could the circuit court of the United States which tried this cause have departed from this rule, and disregarded and overruled the decisions of the court of Rhode Island? Undoubtedly the courts of the United States have certain powers under the Constitution and laws of the United States which do not belong to State courts. But the power of determining that a State Government has been lawfully established, which the courts of the State disown and repudiate, is not one of them. Upon such a question, the courts of the United States are bound to follow the decisions of the State tribunals, and must therefore regard the charter Government as the lawful and established Government during the time of this contest."

So that it appears, by a decision of the highest judicial tribunal in the land, that whether the House acts, in judging of the elections, returns, and qualifications of its members, in a political or judicial capacity, it has the power, and, I may add, it is its duty, when the inquiry becomes important, to ascertain and decide as to the regularity and legal existence of State—and of course of Territorial—Governments and Legislatures. And such inquiry, I maintain, does become important when a material question in issue is, whether there were at a certain time laws in force in a State or Territory prescribing the way and manner of holding elections, as required by the organic law thereof. And this will depend upon another and *previous* question: whether there was in existence a legislative body competent to pass such laws.

Why, sir, the power to decide upon the title of men, and bodies of men, as Legislatures, to the offices and functions which they claim, is recognised in a thousand cases in the books, where, upon *quo warranto*, such titles have been examined and passed upon.

There is a question of this kind being heard to-day before the Supreme Court of the State of Wisconsin. Mr. Barstow claims to have been chosen Governor of that State at the late election, and has been so declared by the board of State canvassers. Mr. Bashford, the opposing candidate, impeaches the decision of the canvassers, and alleges that the returns upon which it was made were forgeries, or procured falsely and fraudulently; and that he, in fact, had a majority of the legal votes, and was therefore duly elected. The Supreme Court, upon argument, has taken jurisdiction of the question, and decided that it has power to go behind the action of the canvassers, and declare which of the claimants was duly elected.

The result is, that where the political power of the United States has recognised a State Government, the Supreme Court will adopt that recognition, so far as it legitimately extends; and where there has been no decision by the political power, or in cases outside of the scope of a decision, if there have been one, it will adopt the law declared by the highest State court.

Mr. Speaker, I cannot pass from this branch of inquiry without remarking again upon the extent of the power claimed by the gentleman from Maryland for the President. If the gentleman is right in his conclusions, there is but one power in the land—that of the Executive; there is no House and no Senate; the President is judge of their elections, and is the master of the States; he may raise up and he may put down at will; he may prepare his own opportunities, and, availing himself of the results of his own machinations, declare the law for the States, the courts, and the people. The true and constitutional limitation is this: the President, from necessity, must judge and decide for himself when the exigency arises upon which he is to act. When in a State there is an insurrection or domestic violence, the President may, upon proper request, interfere to restore order and prevent bloodshed. He must act upon the instant; and, by his proclamation, recognise the authority which he holds to be regular; and this recognition is the law of that case, and goes no further, and can go no further without breaking down the powers of the co-ordinate branches of the Government. He has no more right, by his decision, to control the constitutional functions of the Senate and the House of Representatives, than they, or either of them, have to control his. Each must decide for its own exigency; and each, in its own sphere, is independent of the other. Why, sir, after the President has recognised a State Government as the authorized and regular Government, and has succeeded in his duty of quelling the disturbances there, the people of the State may peaceably

recognise the antagonist Government, submit to it, choose Senators and Representatives under it, and they, coming here, may be admitted by the Senate and the House; and thus the Government which they represent will be acknowledged to be the true and rightful Government by Congress, and such acknowledgment will be the political decision which the Supreme Court declares it is bound to follow.

What has been said in this debate in respect to Governments *de facto* is applicable to foreign rather than to our State Governments, and has no bearing upon our Territorial Governments. A Territorial Legislature, in so far as the power is granted by its organic law to make laws or rules for the election of a Delegate to Congress, is this *agent* of the General Government or of the House; and the House has a right to know that the particular agent provided for making these laws has acted therein. In the debate upon the contested-election case from Illinois, recently before the Senate, Judge BUTLER, from South Carolina, said:

"Members of a State Legislature occupy a double relation. They become, in *some respects*, *constituents of the Federal Government*, so far as *their agency* may be employed in electing Senators to the Congress of the United States under the Federal Constitution."

And, again:

"The member of a State Legislature occupies the double relation of being the representative of his own constituents, so far as their home interests are concerned, and also of being one of the agents contemplated by the Constitution of the United States to make a Senator of the United States."

Apply these principles to the case before us, and we must regard the Legislature of Kansas as our agent for the purpose of making laws for the election of a Delegate. Those laws can be made only by the agent which we authorized, and not by another. Delegates are allowed to Territories by the grace and favor of Congress. Unlike States, they have no constitutional right to be represented in these Halls. Congress may receive or refuse them at its pleasure. It may reject all laws upon the subject at any time. When it extends this favor, it may couple it with conditions. It may impose the condition that laws shall be made for the holding of the elections by a Legislature, to be chosen, in respect to time, place, and suffrage, as it shall prescribe; and when a Delegate comes here, the House may well inquire whether all these conditions have been kept; and if not, it may clearly and unquestionably reject him.

Something more than twenty years ago, a case similar to this, in principle, was before the Senate. Under the old charter Government of Rhode Island, there was a failure to elect one of the Houses of the Legislature, and, by a law which it was insisted, on one side, that body had no power to make, the old Legislature was continued until another should be elected. By the Legislature thus holding over, Mr. Robbins was chosen United States Senator. A new Legislature was elected the year after, by which the election of Mr. Robbins was declared null and void. It then proceeded to an election for Senator, and made choice of Mr. Potter. Both gentlemen appeared before the Senate, and claimed the seat. The question was very thoroughly discussed; and it turned upon the question of fact, whether, under the charter and by the laws of Rhode Island, the Legislature held over. The Senate decided that it did, and admitted Mr. Robbins. The majority of the committee to whom the subject was referred, while incidentally recognising some of the doctrines maintained by the minority of the committee in this case, acted upon those of the majority. They say:

"To constitute a Legislature capable of enacting laws or performing any other duty confided to that body by the Constitution of the State or of the United States, it is essential that there should be in existence, at the same time, a Governor, or some officer authorized to perform the executive functions; a Senate, and House of Representatives. In the absence of either, the other branches could not perform any act which would be obligatory on the people of the State. *We are then brought to the inquiry*, Whether these component parts of the Legislature of Rhode Island were assembled at Providence in January, 1834, when Mr. Robbins was elected, in grand committee, a Senator to Congress?"

Again:

"It remains, then, to be inquired, Was this body, so assembled, the *Legislature* of Rhode Island? The law, by virtue of which they continued to exercise the powers of legislation, is said to be repugnant to the charter, and therefore void. If this be a sound objection, it at once annuls every part of the proceedings, and, as a necessary consequence, that of choosing a Senator in Congress."

The minority of the committee in the Rhode Island case, consisting of Mr. Wright, of New York, and Mr. Rives, of Virginia, held not only that the Senate had power to inquire whether the body which elected Mr. Robbins was the Legislature of Rhode Island, but also that, upon investigation, it appeared that this body was not the Legislature of that State, and therefore that Mr. Potter was duly elected. Mr. Rives resigned his seat in the Senate before the report of the minority—in the conclusions of which, it was said, he concurred—was presented. Mr. Wright drew the report, and it is marked by that clearness and force for which that great man was so justly distinguished. He says:

"But however this may be, he cannot but consider it a plain proposition, and not requiring argument to support it, that when the constitutional organization or action of a State, existing to be the Legislature of a State, is the question in issue, the acts of that body whose constitutional powers are disputed, are not to be adduced as evidence of the constitutional power of the body to perform them. When the constitutionality of a legislative act is questioned, he cannot believe that the act itself is to be relied upon as evidence of its own validity. Equally clear it is to his mind, that when such a question is to be determined, the consequences of pronouncing the act to be invalid are not considerations which should legitimate or control the decision. If the act is unconstitutional or unconstitutional, if constitutional, the dispute is settled; if unconstitutional, no consequences to follow from a pronunciation of the fact, can make it valid. *So with the body claiming to be the Legislature of a State. If the Legislature of the State, according to the provisions of its Constitution, the controversy is at an end; if not the Legislature of the State, no acts of theirs in their assumed character, and no consequences to follow from the invalidity of those acts, can give them the powers which they had not when the acts were performed, or make them what they were not, the Legislature of the State.*"

I will conclude what I have to say upon this branch of the case with the remark, that, if these views of Mr Wright be sound, "the controversy is at an end."

I did not notice in its order the objection interposed by the minority, that Governor Reeder is

estopped, by his own acts, from denying the legal and proper existence of the Kansas Legislature, and for the reason, that the answers to this objection by the majority report, and by the learned gentleman from Maryland, seem to me to be triumphant and complete. It cannot have escaped the attention of the House, that the gentleman from Georgia, while he regards the Governor of Kansas, when he acts as a canvasser of votes and returns, as but a *ministerial* officer, and therefore bound to give certificates of election to such persons as *appear by the returns* to be elected, the final and ultimate right to decide being in the Legislature, holds and stoutly maintains that Governor Reeder is concluded by operation of the doctrine of estoppels—that he is estopped because he did something which, as a ministerial officer, he could not help doing. On the other hand, the gentleman from Maryland contends that the Governor, in canvassing the returns and issuing certificates of election, was invested with more than ministerial powers, and that his decision was final and conclusive, and cannot be reconsidered. Still, he scouts, as well he may, and not inconsistently, this whole business of estoppels, in connection with political questions.

The gentleman argued with considerable force, from the language of the Kansas-Nebraska act, that the Governor was the final and only judge of the elections of members of the first Legislature of the Territory of Kansas. The language of the act is as follows:

"The persons having the highest number of legal votes in each of said Council districts, for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of said House: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place, and on such day, as the Governor shall appoint."

This act is the Constitution of the Territory, and in it no power is expressly delegated to the first Legislature to judge of the elections, returns, &c., of its members. And if it be the true interpretation of the law, that it was the design of Congress that the machinery for organizing the Territory should be put in motion by those members only who should obtain the certificates of the Governor, what will be the result? It seems to me to follow irresistibly, that those members, and those only, who were declared to be *duly elected* by the Governor, could act in the Legislature, and that the acts of a body differently constituted cannot be the acts of *the* Legislature contemplated by the organic law of the Territory. Seven members who received certificates from the Governor were rejected by the House of Representatives, and seven who had not received certificates were admitted. Could this be the Legislature which was to consist of twenty-six members, "declared to be duly elected" by the Governor? Here were but nineteen members with certificates, a minority of whom, with the members illegally admitted, would be a majority of the whole body, and could pass bills in opposition to the will of the majority of those who had been legally returned. If the nineteen duly elected could not admit others to their number, as they could not if the Governor was the sole judge of elections, and yet be a Legislative body capable of transacting business, the organic law would be virtually repealed, and a quorum for doing business would be reduced from fourteen to ten, which would, clearly, be a very different body from that provided for by the law of Congress. The case is as if a board of commissioners, consisting of three members, who, by the law establishing it, were to be appointed by the President, upon assembling to enter upon the discharge of their functions, should proceed to remove one of their number, and appoint another in his place. In such case, it may be presumed no one would contend that the action of the board could be of any force or validity.

Mr. Speaker, a few words by way of review and "improvement," and I will bring these remarks to a close. The minority demur to the memorial of Governor Reeder, and to the report of the majority, but in so doing admit, in effect, the general and substantial correctness of their statements. They do not pretend to say that thousands of Missourians did not go over to Kansas on the 30th of March, and vote for members of the Legislature, and prevent citizens of the Territory from voting. And, sir, if the majority believed that this great question of public and universal concern, in whose issues are folded and contained, it may be, the future of the Republic, could properly and fittingly be tried and decided upon the technical pleadings of the courts, upon estoppels and demurrers, they would say, "Gentlemen, upon your own admissions, and by your own rules of construction, as applicable thereto, you have confessed the facts. By your general *pro forma* denial, with no specifications in detail—by your allegation that the complaints and charges, if true, amount to nothing, and this House has no jurisdiction—you have admitted, for the purposes of this trial, the truth of the averments in the memorial of Governor Reeder; and upon the rules recognised in every court of law, the case is to be decided upon such admissions."

But, sir, this cause is not to be, ought not to be, so decided. The House ought to know, the country desires to know, and should be informed, what the *actual* facts are. A judgment upon estoppels and demurrers will not be satisfactory to the House or the people; for it would leave, after all, the vital question of *fact*, and the question of the rights of the people of Kansas and of the parties here, open to dispute and controversy. What is wanted and demanded, is an impartial hearing, and an honest, intelligent judgment upon the very facts. Are gentlemen afraid of the facts? Will they suppress the truth? What will be the inevitable judgment of the country, if they do? They only fear the truth, "whom the truth would indict."

Sir, the doctrine of the minority, that this House has no authority to inquire whether, in point of fact, there was a legal Legislature in Kansas, and which goes to the extent that even if thousands of armed men did march from Missouri, their

place of residence, to Kansas, and there, by threats and force, take possession of the polls in every election district, and disregarding and trampling upon the laws and rules of election prescribed by the rightful authority, levying citizens from voting, did themselves elect every officer; and thus impose upon the people of Kansas a Legislature—to call it such—against their wishes, in contempt of their laws, and in flagrant violation of their dearest rights, still there is no remedy; that the House, in a case where its own rights and duties are directly concerned, and where, from the nature of the subject, it has full and plenary power to investigate and judge, must regard and hold such Legislature to be legal and rightful, and its pretended enactments as absolutely binding upon all parties, and protected from every inquiry, is a startling and monstrous doctrine. No doctrine more dangerous or alarming, none more false and treacherous to liberty and to law, has ever been ventured in any Government, even the most tyrannical and despotic, of which history has kept the record. I say more treacherous to *law*—to law—

> "The State's collected will,
> O'er thrones and globes elate;
> Crowning good, repressing ill"—

not the will of one people over another; not, sir, the raw and unbridled will of Missouri mobs, in regard to the affairs of Kansas, pronounced in edicts such as have been read upon this floor, "crowning" the indescribable evil of Slavery, and "repressing" the priceless good of Liberty.

Gentlemen upon the other side of the question have spoken eloquently in behalf of law and order. The simplicity and apparent sincerity with which they have insisted that law and order were to be respected in this case, by upholding a pretended Legislature in Kansas—admitted to be elected in good part by non-residents; elected, as is charged—and this is the question in issue—in contempt of all law, order, and decency, by fraud, force, and unheard-of outrages; and by submitting, uncomplainingly, to the acts of such a body, sitting in fraud of the rights of the people, was indeed admirable; or the irony of their remarks, if they were so intended, was more admirable still. The law must be kept by protecting law-breakers, and sustaining their doings in open violation of all law! Order must be observed, by yielding an unquestioning obedience to acknowledged mobs! Sir, we stand for law; this House, I trust, will stand for law and by law, and ascertain what the law is, in so far as it is itself concerned, and bound to know and act upon it. It should inquire and investigate to this end, and be careful that the law, rather than the resolutions of marauders, shall control its decisions.

In no State or Territory upon any question where Slavery is not concerned, would such principles and doctrines as we have heard in this debate be avowed. Suppose that an invasion like the one alleged to have been made upon Kansas—and I have argued this case, as I had a right to do, as if all could be proved which is charged—had been made upon Minnesota from Canada, and that under similar circumstances of fraud and force a Legislature had been imposed upon that Territory; and then that under its pretended laws a Delegate elected by Canadians had been sent here—where is the man who would consent that Canada should be permitted in this way to be represented in this House? Oh! sir, nothing but the system of Slavery—its necessities for strange and unfounded assumptions and demands—could suggest or permit such opinions and claims as have been set up here. They must not be tolerated for a moment. Does any man imagine that those to whom they are addressed do not perceive how utterly unsound and groundless they are? Should they submit to them, they would acknowledge their unfaithfulness or incapacity, and justly become the scorn or pity of mankind.

Mr. Speaker, for the sake of Slavery, solemn compacts of long standing, deliberately entered into, and with mutual considerations, have been destroyed; pledges of faith and honor have been cast like worthless weeds away; the great writ of right, sacred for centuries, wherever the common law has been known, to the protection of mankind—the HABEAS CORPUS—has been struck down; the TRIAL BY JURY, the palladium of civil right and personal security, born of the conflicts of liberty with despotism, and baptized in the blood of men struggling to be free, consecrated in our hearts as the ancient and indefeasible heritage of the people, guarded by the Constitution, stands against all assaults except those of Slavery; and, as if these things were not enough, we are now told that the instruments of this sectional interest its gangs and invading armies, may enter and seize upon our infant Territories, our *own* Territories, under the immediate and especial protection of the General Government—subjugate the people rightfully residing there, make laws and elect Delegates for them; and this House, in its unrestricted power to judge of the elections of its members, has no authority to inquire into their proceedings, or to resist the admission of such Delegates upon this floor.

Slavery, in its claims and demands of to-day, is so much greater and better than anything else, nay, than all things else, that to protect and strengthen it, is held to justify the destruction of whatever stands in its way. The rules of the House are broken down by unscrupulous majorities, and less than a quorum of members permitted to report bills from the Committee of the Whole to the House at its call. Laws are set aside, and compromises violated for its sake, and nothing is held sacred against its assaults. The great idea of the Declaration of Independence, and which has given its author a name that

> "Through the ages,
> Living in historic pages
> Brighter grows and gleams immortal,"

is pronounced in the Senate of the United States a "self-evident lie." All memories and hopes, all possessions and rights—the Constitution, the Union, the living Gospel of "peace on earth and good will to men," are but flax and stubble, when exposed to the consuming flame of this insatiate and inexorable system.

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